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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,399	09/26/2006	Shaow Lin	DC10103 PCT1	9226
7550 03/10/2009				
Alan Zombeck Dow Corning Corporation 2200 W Salzburg Road Midland, MI 48686-0994				
EXAMINER				
LOEWE, ROBERT S				
ART UNIT		PAPER NUMBER		
1796				
MAIL DATE		DELIVERY MODE		
03/10/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/594,399

**Applicant(s)**

LIN ET AL.

**Examiner**

ROBERT LOEWE

**Art Unit**

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11, 13, 14 and 16-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11 and 16-19 is/are allowed.
- 6) ☒ Claim(s) 13, 14, 20 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Applicant's arguments/remarks, filed on 1/27/09, have been fully acknowledged.

#### ***Response to Arguments***

Applicant's arguments/amendments have been fully considered and are found to be persuasive in part. Specifically, the Examiner agrees that neither Cen et al. nor Tsubaki et al. teach or suggest the process for preparing vesicles as required by independent claim 11. Further, none of the art of record teaches or renders obvious such a process. Therefore, all of the process claims (i.e., claims 11 and 16-19) are deemed to be in condition for allowance (see reasons of allowance below). However, the previously relied upon prior art rejection of claims 13, 14, 20 and 21, which are product claims is maintained. Specifically, Cen et al. employs several embodiments in which no water miscible volatile solvent is added to the composition. Instant claim 11 teaches the addition of, and subsequent removal of a water miscible volatile solvent. Therefore, in those instances where Cen et al. does not teach the addition of any water miscible volatile solvent, the **product** would not contain any water miscible volatile solvent, which would satisfy product claims 13, 14, 20 and 21.

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 13, 14, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cen et al. (US Pat. 6,632,420) in view of Tsubaki et al. (US Pat. 5,472,686).

Cen et al. teaches an aqueous dispersion which is prepared by mixing water (6:59) and an AB-type silicone polyether (5:21-23) to form a microemulsion. Cen et al. further teaches that an antiperspirant salt may be employed as well (examples 3 and 4). Cen et al. further teaches mixing the ingredients to form a microemulsion (example 2).

Cen et al. does not teach that the silicone polyether graft copolymer is of the  $(AB)_n$  type of instant claim 11. However, Tsubaki et al. does explicitly teach  $(AB)_n$  block silicone polyether copolymers which have the structural limitations of instant claim 11 [reaction (a) at the bottom of columns 3 and 4]. Cen et al. and Tsubaki et al. are combinable because they are from the same field of endeavor, namely, personal care compositions comprising silicone polyether copolymers. At the time of the invention, a person having ordinary skill in the art would have found it obvious to employ the  $(AB)_n$  block silicone polyether copolymers as taught by Tsubaki et al. into the aqueous microemulsions as taught by Cen et al. and would have been motivated to do so because Tsubaki et al. teaches the advantages that the  $(AB)_n$  block silicone polyether copolymers have in various cosmetic formulations when compared to the graft silicone polyether copolymers and ABA block silicone copolymers such as those taught by Cen et al. (control

examples 9, 12, 13, 16, 18, 20, 22 and 24 of Tsubaki et al.). Cen et al. teaches a personal product (antiperspirant) which comprises the same ingredients which would result from the process according instant claim 11 (example 1).

While Cen et al. in view of Tsubaki et al. do not collectively teach the claimed process of instant claim 11, the final compositional makeup which results from the process of instant claim 11 is the same as which is taught by Cen et al. in the examples (i.e., no water miscible volatile solvent addition). Therefore, it is the position of the Examiner that Cen et al. in view of Tsubaki et al. render obvious the composition claims 13, 14, 20 and 21. The courts have stated that "Where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a *prima facie* case of either anticipation or obviousness has been established." Further, if it is the applicant's position that this would not be the case evidence would need to be provided to support the Applicant's position.

#### ***Allowable Subject Matter***

Claims 11 and 16-19 are allowed. Specifically, neither Cen et al. nor Tsubaki et al. teach or suggest a process in which the water miscible volatile solvent is removed as required by step (III) of the instant claims. Further, there is nothing of record which would render obvious such a step.

Claims 13, 14, 19 and 20, while being dependent from an allowed claim, are rejected since these claims are drawn to a different statutory class (i.e., composition) compared to

independent claim 11, which is a process claim. In these situations it is proper to reject the product claims (see rejection above).

### *Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### *Correspondence*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT LOEWE whose telephone number is (571)270-3298. The examiner can normally be reached on Monday through Friday from 5:30 AM to 3:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on (571) 272-13021302. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. L./  
Examiner, Art Unit 1796  
29-Jan-09

/Randy Gulakowski/  
Supervisory Patent Examiner, Art Unit 1796